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STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

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Analysis of Enrolled House Bill 5032 (As Passed House)

Topic: Michigan Zoning Enabling Act
Sponsor: Representative Byrum
Co-Sponsors: Representatives Simpson, Miller, LeBlanc, Hood, Virgil Smith, Polidori, Brown, and Pastor
Committee: House Intergovernmental, Urban and Regional Affairs
Senate Local, Urban & State Affairs
Date Introduced: July 18, 2007
Date Enrolled: February 21, 2008
Date of Analysis: February 19, 2008

Position: The Department of Labor & Economic Growth supports the bill.

Problem/Background: In 2006, the Legislature codified Michigan's zoning laws, implementing a key recommendation of the Governor's Land Use Leadership Council. Three separate zoning laws, one for cities and villages, another for townships, and a third for counties, were combined into a single statute. Since enactment, a few minor technical problems have been noted.

Description of Bill: The bill clarifies the definitions of "airport manager", "legislative body", and "zoning jurisdiction"; inserts a definition of "person"; and deletes the definition of "zoning board."

The notice requirements in the act are clarified. Notice must be published not less than 15 days before the date of the public hearing. In cases where there is more than one occupant of a structure, notification need not be given to all occupants. An exception is made in cases where there is more than one dwelling unit or spatial area owned or leased by different persons. If a single structure contains more than four dwelling units owned or leased by different persons, notice may be given to manager or owner of the structure. The manager or owner would be requested to post the notice.

The bill clarifies that giving notice means "when personally delivered or when deposited during normal business hours".

The requirement that each local government exercising zoning authority create a zoning commission is retained, but the bill clarifies the three ways the requirement may be met. The bill specifies a July 1, 2011 date for local units to transfer the powers and duties of the zoning commission to a planning commission. The current provision that the transfer occur "five years after the effective date of this act" may be somewhat unclear to many local officials.

Notice requirements would be less onerous for local units of government. The legislative body would be required “provide [an interested party] an opportunity to be heard”. In the case of a request seeking an interpretation of a zoning ordinance or an appeal of an administrative decision, the requirements are simplified by striking current language and substituting a reference to Section 103. Where a specific parcel is not involved, notice must be published in a newspaper and given to the person making the request.

The bill specifies more clearly than the current law that filing and publication requirements in the act supersede charter provisions.

Multiple technical changes are made in language relating to the zoning board of appeal (ZBA). The most substantive change is a prohibition of a member of a zoning board of appeals member who is also a member of a zoning commission or planning commission from participating in a public hearing and voting on the same matter that the member voted on at the other body. However, the member would be permitted to vote on other unrelated matters involving the same property.

A 21-day appeal from city and village zoning board of appeals’ decisions would be established. The current 30-day time frame would remain for townships and counties. Language specifically allowing appeals of circuit court decisions to the Court of Appeals is struck. Appeal would now be by leave.

The bill clarifies that the local zoning ordinance is subject to the Zoning Enabling Act and need not be readopted.

The Senate committee adopted amendments restoring language that public hearing notices must be published in a newspaper. Additional technical amendments were adopted on the Senate floor to the site plan provisions of Section 501.

Summary of Arguments

Pro: Michigan’s Zoning Enabling Act was a landmark achievement. However, a year of experience has resulted in recommended changes from users. These recommendations came from attorneys, planners, zoning administrators, and others working in this area. Most are quite technical and a few are substantive, but all are important to a smooth working zoning law.

The zoning consolidation was based on the Township Zoning Act, and some of the requirements do not work nearly as well for cities and villages. In particular, some city attorneys believe that the 21-day appeal window of former law should be restored for cities and villages.

Con: There does not seem to be an obvious reason for establishing a different ZBA appeal window for cities and villages.

Response: Although the Zoning Enabling Act consolidated and harmonized many zoning law provisions, there are many instances of differing provisions for different types of local government.

The Senate committee amendments will continue the unnecessary costs associated with publishing a notice of every zoning board of appeals hearing in a newspaper of general circulation. These substantial costs imposed on the local government will be passed on to applicants. The Michigan Municipal

League has suggested that in some cities a property owner requesting a one foot side yard setback variance for a car port may pay wind up paying more for the permit than for the car port.

The requirement also will result in delays for property owners in securing a technical variance from the zoning ordinance. Such requests are typically very specific and once a notice to everyone living within 300 feet has been mailed as required by law there is no public purpose served by requiring publication in a newspaper.

Fiscal/Economic Impact

(a) Department: There is no fiscal impact on the department.

(b) State: There is no fiscal impact on the state.

(c) Local Government

Comments: Restoring the requirement that notices of zoning board of appeals hearings be published in a newspaper of general circulation will impose substantial costs on local governments. These costs will be passed on to property owners.

Other State Departments: None.

Any Other Pertinent Information: The Michigan Association of Planning, the Michigan Municipal League, and the Michigan Townships Association have indicated support for the bill. The Michigan Association of Realtors opposes the bill.

Administrative Rules Impact: There is no administrative rule impact.